IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4208 OF 2006

Mr.Deepak Navnitlal Parikh
and 4 Ors. ...Applicants.

Versus

Mr.Kishor D. Kakal
and Anr. ...Respondents.

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Mr.Prakash Naik, Advocate for the Applicants.
Mr.N.R.Nuonaney, Adv. for Respondent No.1.
Mr.S.R.Shinde, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 6th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicants-orig.accused Nos.5,6,7,11 & 12, the learned Advocate for respondent No.1-orig.complainant and the learned APP for the State.

2. The applicants are facing prosecution in case under section 138 of N.I.Act. The said case is Criminal Case No.6887/SS/2005 and it is pending before the learned M.M., 33rd Court, Ballard Estate, Mumbai. In the said case process came to

be issued against the applicants under section 138 of N.I.Act. Being aggrieved thereby, the applicants had preferred revision before the Sessions Court.

3. As there was delay of six months in preferring the said revision, the applicants preferred an application for condonation of delay. However, the said application for condonation of delay came to be rejected by the learned Sessions Judge.

4. Mr.Naik has submitted that the applicants are residents of Gujarat and till recently in view of the decision of the Supreme Court in case of **Adalat Prasad Vs. Rooplal Jindal and Ors., 2004 (4) Mh.L.J.274** the order of issuance of process was challenged before the High Court by way of application under section 482 of Cr.P.C.. Mr.Naik has submitted that it was only after the decision of this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode, reported in 2005(3) Mh.L.J.778**, that revisions against order of Magistrate issuing process were preferred before the Sessions Court. The applicants then took

legal advice whether they should prefer an application under section 482 Cr.P.C. or a revision. Mr.Naik submitted that when the applicants came to know that the view of this Court in the case of **V.K.Jain** (supra) was confirmed by the Supreme Court, then the applicants realised that they could not file an application under section 482 Cr.P.C. for quashing process but they had to file revision before the Sessions Court. Hence there was delay in filing revision.

5. Looking to all these facts, in the interest of justice, I am inclined to condone the delay in filing revision, on the applicants giving costs of Rs.5,000/- to the respondent No.1-orig.complainant. Mr.Naik states that the costs will be paid to the learned Advocate for the respondent No.1 within two weeks from today. On the costs being paid, the delay shall stand condoned and the Sessions Judge will hear the revision and dispose it of on merits after hearing necessary parties.

6. Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)